

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23
	)	

**VIRGIN ISLANDS TELEPHONE CORP. D/B/A INNOVATIVE TELEPHONE'S  
PETITION FOR CLARIFICATION AND WAIVER**

The Virgin Islands Telephone Corp. d/b/a Innovative Telephone (“Innovative”) has been working diligently with the Virgin Islands Public Services Commission (“VIPSC”) to implement the Commission’s comprehensive reforms to the Universal Service Fund’s Lifeline program.<sup>1</sup> Unfortunately, Innovative and the VIPSC have encountered unique issues in the United States Virgin Islands (“USVI”) where, for historical reasons, the Commission’s rules to determine eligibility for Lifeline benefits do not neatly fit. Accordingly, Innovative seeks clarification or, in the alternative, waiver of section 54.409(a) of the Commission’s rules.<sup>2</sup>

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, FCC 12-11 (rel. Feb. 6, 2012) (“*Order*”).

<sup>2</sup> The Virgin Islands Department of Human Services (“DHS”) makes Lifeline eligibility determinations regarding Innovative’s customers. The Commission waived sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) in several jurisdictions, including the USVI, until the sooner of December 1, 2012 or until the jurisdiction’s Lifeline process has been modified to comply with the Commission’s rules. *Lifeline and Link Up Reform and Modernization*, Waiver Order, WC Docket No. 11-42, DA 12-863 (rel. May 31, 2012) (“*Waiver Order*”). In this Petition, Innovative seeks an extension of this waiver relief.

First, unlike on the mainland, residents of the USVI are not eligible for Supplemental Security Income (“SSI”), which is one of the programs in the Commission’s rules used to determine eligibility for Lifeline benefits. *See* 47 C.F.R. § 54.409(a)(2). The Social Security Act of 1972 (Public Law 92-603) ended matching Social Security grants to the 50 States and the District of Columbia. In place of these grants, Congress created the SSI program, which provides benefits to eligible consumers. Although later extended to the Northern Marianas Islands, SSI was not extended to the USVI, Guam, or Puerto Rico. Instead, four grant programs for the blind, disabled and aged previously authorized under the Social Security Act were continued in these Territories. These programs were Title I, Assistance for the Aged; Title X, Aid for the Blind; Title XIV, Aid to the Permanently and Totally Disabled; and Title XVI, Aid for the Aged, Blind or Disabled.

Unfortunately, the four grant programs for the blind, disabled and aged pursuant to which consumers are eligible to receive Social Security benefits in the USVI are not included in the Commission’s list of programs to determine Lifeline eligibility. 47 C.F.R. § 54.409(a)(2). And, the Social Security program referenced in the Commission’s rules – SSI – is not one in which USVI residents are eligible to participate. Thus, absent clarification, USVI residents who currently receive or become eligible to receive Social Security benefits would be unable to establish program eligibility for Lifeline, which presumably was not the Commission’s intent.

Under the circumstances, the Commission should clarify section 47 C.F.R. § 54.409(a)(2) to permit a consumer in the USVI to demonstrate eligibility for Lifeline by establishing that the consumer, one or more of the consumer’s dependents, or the consumer’s household receives benefits under the four grant programs for the blind, disabled and aged authorized by the Social Security Act. Participation in these programs has been used for years in determining Lifeline

eligibility in the USVI, and consumers must have incomes and resources below specific threshold amounts in order to participate. Thus, the requested clarification would result in equitable treatment of consumers in the USVI, while preserving the Commission's desire to limit participation in the Lifeline program to those in financial need.

Second, unlike on the mainland, participation in the National School Lunch Program ("NSLP") is not means-tested in the USVI. As a result, all students in the public school system in the USVI receive free school lunches under NSLP, regardless of family income. All students in private and parochial schools in the USVI also receive free school lunches if their schools apply to participate in the program, which many do. Because federal law exempts the USVI and Puerto Rico from the qualification and certification requirements of the NSLP, there is no income test for individual students, and neither students nor their families are required to enroll in the program in order to receive school lunches. *See* 7 C.F.R § 245.4.

Nonetheless, the Commission's rules include the NSLP as a mechanism to determine program eligibility for Lifeline, which means that nearly every household in the USVI with school age children arguably qualifies for Lifeline benefits, even the most affluent households in the Territory. The Commission presumably did not intend such a result, which would be inconsistent with the purpose of the Lifeline program. Consequently, the Commission should grant clarification or, in the alternative, a waiver of section 54.409(a)(2) to exclude the NSLP from the list of programs that can be used to establish Lifeline eligibility in the USVI.

Third, unlike on the mainland, no Federal Poverty Guidelines ("FPG") have ever been established for the USVI. According to section 54.409(a)(1) of the Commission's rules, consumers will qualify for Lifeline benefits if household income is at or below 135 percent of the FPG for a household of that size. However, it is unclear which of the two separate FPG tables

published annually by the U.S. Department of Health and Human Services – the table for the U.S. Mainland or the table for Alaska and Hawaii – applies to the USVI.<sup>3</sup>

On the one hand, because the cost of living in the USVI is closer to Hawaii or Alaska than in an average state, it may be appropriate to use the FPG table for Alaska and Hawaii in making Lifeline eligibility determinations in the USVI. On the other hand, other means-tested federal programs – such as the Supplemental Nutrition Assistance Program administered by the Department of Agriculture – apply the U.S. Mainland table to the USVI. Nevertheless, because the choice of tables in determining whether a consumer in the USVI meets the income-eligibility standard for Lifeline rests with the Commission, Innovative respectfully seeks clarification on this issue.

Innovative acknowledges that these issues are not new. In fact, both Innovative and consultants for the VIPSC brought these issues to the attention of Commission staff earlier this year.<sup>4</sup> Based on advice from staff that the VIPSC would need to seek formal guidance from the Commission, the VIPSC's consultants recommended to the VIPSC that it file a petition for waiver and clarification given the unique circumstances in the USVI.<sup>5</sup> Unfortunately, the VIPSC has lacked a quorum of its members necessary to act on this recommendation, which leaves Innovative with no choice but to file this Petition.

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<sup>3</sup> According to the U.S. Department of Health and Human Services' website, "The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure." <http://aspe.hhs.gov/poverty/12poverty.shtml>.

<sup>4</sup> See Letter from Jamshed K. Madan, Georgetown Consulting Group, to the Honorable M. Thomas Jackson, Chairman, Virgin Islands Public Services Commission, at 4 (Nov. 10, 2012).

<sup>5</sup> *Id.* at 18-19.

While it considers whether to clarify or waive section 54.409(a) of its rules, the Commission should continue in effect the waiver of sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) granted to the USVI in the *Waiver Order* and should extend accordingly the current December 1, 2012 deadline for compliance with these rules. In addition, the Commission should waive section 54.410(f) of its rules and extend the December 31, 2012 deadline for completing the process of re-certifying the eligibility of Lifeline subscribers in the USVI for a reasonable period of time after the Commission resolves the issues raised in this Petition.

The Commission may waive its rules for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>7</sup> In short, a waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.<sup>8</sup>

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<sup>6</sup> The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission's grant of a waiver "[g]iven the deference due the agency in matters of this sort"); *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission "is narrow and constrained"). As the D.C. Circuit has observed, the Commission's waiver determinations are entitled to heightened deference because "the agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances." *AT&T Wireless Services, Inc. v. AT&T*, 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

<sup>7</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>8</sup> *Northeast Cellular*, 897 F.2d at 1166; *see also Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, WC Docket No. 05-174, *Order*, 2005 FCC LEXIS 4527 (Aug. 11, 2005).

Here, granting the requested waiver would serve the public interest. First, without an extension of the limited waiver from rules 54.407(d) and 54.410(b)(2) and (c)(2) previously granted in the USVI, some or all new low-income consumers will not receive Lifeline benefits to which they otherwise are entitled.

As a prerequisite to receiving reimbursement under the Lifeline program, Innovative “must certify, as part of each request for reimbursement, that it is in compliance with all of the [Commission’s Lifeline rules], and, to the extent required [under these rules] has obtained valid certification and re-certification forms from each of the subscribers for whom it is seeking reimbursement.” 47 C.F.R. § 54.407(d). Likewise, Innovative is prohibited from seeking “reimbursement for providing Lifeline service to a subscriber” unless and until it has received from the state Lifeline administrator or other state agency: (i) notice that the prospective subscriber meets the income- or program-eligibility criteria under the Commission’s rules; and (ii) a copy of the subscriber’s certification form that complies with the Commission’s rules. 47 C.F.R. §§ 54.410(b)(2), (c)(2).

Until the Commission clarifies the scope of its program and income eligibility rules as applied in the USVI, the Virgin Islands DHS will be unable to provide to Innovative the required notice of the subscriber’s eligibility and a copy of the subscriber’s certification form, and Innovative will be unable to provide the requisite certifications necessary to obtain Lifeline reimbursement. As a result, Innovative may have little choice but decline to enroll subscribers in the Lifeline program, which is not an outcome that would be in the public interest.

Second, without a waiver of section 54.410(f) of the Commission’s rules, consumers may lose their Lifeline benefits through no fault of their own because a subscriber may be unable to provide and the Virgin Islands DHS may be unable to obtain the requisite re-certification, in the



absence of clarification of the Commission's program and income eligibility rules in the USVI. This is because section 54.405(e) of the Commission's rules requires an ETC to de-enroll subscribers who fail to provide the requisite re-certification. Absent the requested clarification, Innovative may have no choice but to de-enroll customers from the Lifeline program.

Accordingly, in order to protect low-income consumers and consistent with the public interest, good cause exists for the Commission to: (1) extend the waiver of sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) previously granted to the USVI in the *Waiver Order*; and (2) waive section 54.410(f) of its rules and the December 31, 2012 deadline for completing the process for re-certifying the eligibility of Lifeline subscribers in the USVI. The Commission should waive the deadlines for complying with these for a reasonable period of time after the Commission resolves the issues raised in this Petition.<sup>9</sup>

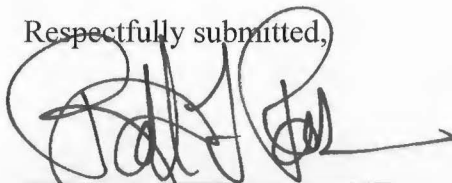
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<sup>9</sup> There are other challenges that regulators and the industry will confront in implementing the Commission's Lifeline reforms in the USVI and other United States territories. For example, Lifeline subscribers must supply a residential address and a billing address, if different from the residential address. 47 C.F.R. § 54.410(d)(2)(ii), (iv). The residential address will be transmitted to the National Life Accountability Database ("NLAD"). 47 C.F.R. § 54.404(b)(6). It is Innovative's understanding that the NLAD will use the U.S. Postal Service's Address Matching Service (AMS) to verify residential addresses. Because the vast majority of residential addresses in the USVI do not have a physical address to which mail is delivered, a substantial percentage of Lifeline customers may not have a residential address recognized by AMS, which could cause otherwise eligible customers to lose Lifeline benefits. At the appropriate time, the Commission should provide guidance on this issue as well.

### III. CONCLUSION

For the foregoing reasons, the Commission should grant Innovative's Petition for Clarification and Waiver.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "B. Ross", with a long horizontal line extending to the right.

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November 29, 2012